

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**PETITION OF WESTERN MASSCHUSETTS ELECTRIC COMPANY
REGARDING SALE OF CAPACITY AND ASSOCIATED ENERGY RELATED
TO THE HYDRO-QUEBEC FIRM ENERGY CONTRACT D.T.E. 00-97**

PETITION OF J.P. MORGAN SECURITIES INC. TO INTERVENE

I. INTRODUCTION

Pursuant to 220 CMR 1.03 and Massachusetts General Law chapter 30A, § 10, J.P. Morgan Securities Inc. ("J.P. Morgan") hereby petitions the Department of Telecommunications and Energy ("Department") for leave to intervene in the above-captioned proceeding. As discussed below, J.P. Morgan conducted the implementing auction that led to the proposed sale in this proceeding. Accordingly, J.P. Morgan has a unique interest in this proceeding and should be allowed to intervene.

Granting J.P. Morgan's Petition to Intervene and allowing J.P. Morgan to make an appearance in this proceeding is consistent with the Department's standards for granting interventions. Further, allowing J.P. Morgan to pursue its interests on its own behalf in this proceeding will expedite discovery and avoid delay in the Department's review of Western Massachusetts Electric Company's ("WMECO") petition ("Petition") related to the auction and proposed sale of certain interests in a Firm Energy Contract between Hydro-Quebec and New England Utilities ("Firm Energy Contract"). The specific grounds that support J.P. Morgan's Petition to Intervene are set forth below.

II. BACKGROUND

In this proceeding, the Department is reviewing the Petition for approval of the sale of WMECO's 3.83% interest in the Firm Energy Contract to Constellation Power Source, Inc. ("CPS"), an indirect, wholly owned subsidiary of the Constellation Energy Group. WMECO's interest was auctioned along with the 18.82% interest of Connecticut Light & Power ("CLP"), a WMECO affiliate, in the same contract and a number of other CLP purchased power agreements. The proposed sale arises out of a public auction that was conducted by J.P. Morgan, acting as an agent of the Connecticut Department of Public Utility Control ("DPUC") and under the supervision of the DPUC's specially designated Utility Operations Management Analysis unit ("UOMA").

J.P. Morgan implemented the procedures used during the course of the public auction, designed to preserve the integrity of the auction process. J.P. Morgan scrupulously

observed each of DPUC's auction requirements in order to realize maximum market values for the sale. The auction was conducted on a highly confidential basis, yielding as much bidder participation as possible. As such, J.P. Morgan is in a unique position to present evidence relating to the auction, aiding the Department in reaching a determination concerning WMECO's petition.

As a result of the public auction, WMECO entered into an agreement with CPS to sell capacity and associated energy from the Firm Energy Contract on April 20, 2000. On November 2, 2000, WMECO filed its Petition for approval of the sale of its interests in the Firm Energy Contract to CPS. Testimony submitted in support of the Petition includes the Direct Testimony of Harris A. Kretsge. Mr. Kretsge is a Vice President at J.P. Morgan and was one of the individuals overseeing the auction. Mr. Kretsge will be available to testify as a witness in this proceeding.

J.P. Morgan anticipates that other parties in this proceeding may propound discovery requests relating directly to Mr. Kretsge's testimony. In that event, as an intervenor, J.P. Morgan will respond by providing information in its custody that cannot otherwise be provided by WMECO. To address all potential questions related to Mr. Kretsge's testimony and otherwise raised in this proceeding, and to protect any confidential information within J.P. Morgan's control from public disclosure, ⁽¹⁾J.P. Morgan requests permission to intervene in this proceeding.

Petitions to intervene in Department proceedings are governed by 220 CMR 1.03(1), which provides in pertinent part as follows:

(b) Form and Contents of Petition. The petition shall state the name and address of the petitioner. It shall describe the manner in which the petitioner is substantially and specifically affected by the proceeding. It shall state the contention of the petitioner, the relief sought and the statutory or other authority therefor, and the nature of the evidence the petitioner will present if the petition is granted.

For the reasons discussed below, J.P. Morgan's Petition to Intervene satisfies the Department's requirements for intervention and should be granted.

III. DISCUSSION

A. NAME AND ADDRESS OF THE PETITIONER.

J.P. Morgan is an investment banking firm whose principal place of business is 60 Wall Street, New York, New York. As discussed above, J.P. Morgan conducted the auction of

WMECO's share in the Firm Energy Contract as agent to the DPUC and under the supervision of UOMA.

B. J.P. MORGAN'S INTEREST IN THE DEPARTMENT'S REVIEW OF THE INTEGRITY OF THE AUCTION PROCESS AND IN PROTECTING CONFIDENTIAL MATERIALS FROM PUBLIC DISCLOSURE IS SUBSTANTIALLY AND SPECIFICALLY AFFECTED BY THIS PROCEEDING.

As discussed above, J.P. Morgan was responsible for implementing the auction and preserving the integrity of the auction process. As the Department in this proceeding will be reviewing that process, J.P. Morgan has an interest in demonstrating the integrity of the process by describing the stringent auction procedures that it implemented and in otherwise assisting the Department in reviewing the proposed sale. The auction procedures included maintaining confidentiality of the participants, ensuring a commercially reasonable auction, being supervised by UOMA, adhering to DPUC's code of conduct, and properly timing the auction. These procedures were designed to maximize the final bid price. Participation of J.P. Morgan in this proceeding will aid the Department's analysis of the auction and the resulting sale. In sum, because the Department will be reviewing the auction organized and overseen by J.P. Morgan, J.P. Morgan is substantially and specifically affected by this proceeding and should be granted intervenor status.

In addition, confidential and competitively sensitive materials related to Mr. Kretsge's testimony that may be requested through discovery in this proceeding are in the sole possession and custody of J.P. Morgan and are not available to or accessible by WMECO or any other party in this proceeding. J.P. Morgan has strictly maintained the confidentiality of this information throughout the course of the auction process. Indeed, extremely confidential materials have not been revealed to anyone other than a limited group of individuals at J.P. Morgan, UOMA, and their legal counsel. Accordingly, only J.P. Morgan is in a position to protect the confidential materials that may be sought through discovery requests. Allowing J.P. Morgan to intervene to directly address these issues as an intervenor will assist the Department in expediting the discovery process and avoid delay in the proceeding. J.P. Morgan is responsible for continuing to preserve the integrity of the auction process by ensuring that the confidentiality of any requested information is protected pursuant to G.L. 25, § 5D. For this reason alone, J.P. Morgan has an interest that is "substantially and specifically affected by [this] proceeding" as required under 220 CMR 1.03(1)(b). Because no party other than J.P. Morgan is in a position to protect the confidentiality of documents that may be produced, J.P. Morgan's interest in this proceeding cannot adequately be represented by any other party.

C. J.P. MORGAN'S ANTICIPATED PARTICIPATION IN THIS PROCEEDING.

As an intervenor, J.P. Morgan will make witnesses available to testify about its implementation of DPUC's design of the auction. Further, as an intervenor, J.P. Morgan anticipates acting to protect confidential documents that are responsive to discovery requests.

D. COMMUNICATIONS.

If this Petition to Intervene is granted, J.P. Morgan requests that communications in this proceeding be directed to its counsel, as identified below:

Carmen D. Legato

Francis A. Vasquez, Jr.

Laura M. Wilson
White & Case LLP
601 Thirteenth St., N.W.

Suite 600 South

Washington, D.C. 20005-3807

Tel. (202) 626-3600

Fax. (213) 639-9355

E-mail clegato@whitecase.com

E-mail fvasquez@whitecase.com

E-mail lwilson@whitecase.com

John A. DeTore

Rebecca L. Tepper

Kristina Engberg

Rubin and Rudman LLP

50 Rowes Wharf

Boston, MA 02110

Tel. (617) 330-7000

Fax (617) 439-9556

E-mail jdetore@rubinrudman.com

E-mail rtepper@rubinrudman.com

E-mail kengberg@rubinrudman.com

IV. CONCLUSION

For the reasons set forth above, J.P. Morgan respectfully requests that the Department grant J.P. Morgan permission to intervene in this proceeding.

Respectfully submitted,

J.P. MORGAN SECURITIES INC.

Carmen D. Legato

Francis A. Vasquez, Jr.

Laura M. Wilson

White & Case LLP
601 Thirteenth St., N.W.

Suite 600 South

Washington, D.C. 20005-3807

Tel. (202) 626-3600

Fax. (202) 639-9355

E-mail cleгато@whitecase.com

E-mail fvasquez@whitecase.com

E-mail lwilson@whitecase.com

John A. DeTore

Rebecca L. Tepper

Kristina Engberg

Rubin and Rudman LLP

50 Rowes Wharf

Boston, MA 02110

Tel. (617) 330-7000

Fax 617-439-9556

E-mail jdetore@rubinrudman.com

E-mail rtepper@rubinrudman.com

E-mail kengberg@rubinrudman.com

Counsel for J.P. Morgan Securities Inc.

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¹ Certain information responsive to the discovery requests directed to Mr. Kretsge's testimony could consist of extremely sensitive confidential and proprietary materials that J.P. Morgan would object to disclosing to any party. In that event, J.P. Morgan anticipates moving for the establishment of certain protective procedures.